

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

BRIAN JOHNSON, on behalf of Himself and All Others Similarly Situated,)	No. 1:07-cv-00599
)	
Plaintiff,)	
)	
v.)	
)	
POZEN INC., JOHN R. PLACHETKA,)	
PETER J. WISE, MARSHALL REESE,)	
and WILLIAM L. HODGES,)	
)	
Defendants.)	

**CO-LEAD PLAINTIFF GILBERT RODRIGUEZ'S MEMORANDUM OF LAW IN
SUPPORT OF THE MOTION TO SUBSTITUTE NEW CO-LEAD COUNSEL
IN THE PLACE AND STEAD OF DREIER LLP**

Co-Lead Plaintiff Gilbert Rodriguez (“Co-Lead Plaintiff”), pursuant to Section 21D of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), respectfully submits this memorandum of law in support of the motion to substitute new counsel, Bernstein Litowitz Berger & Grossmann LLP (“Bernstein Litowitz”), in the place and stead of Dreier LLP as Co-Lead Counsel in this securities class action. On December 15, 2008, Dreier LLP filed for bankruptcy in the United States Bankruptcy Court for the Southern District of New York. Coughlin Stoia Rudman & Robbins LLP, which, along with Dreier LLP, was appointed Co-Lead Counsel, does not oppose this motion.

Pursuant to the PSLRA, the lead plaintiff selects and retains lead counsel to represent the class, subject to approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v) (“The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.”). *See also* Memorandum and Order, dated February 15, 2008 (Docket No. 35) (“Lead Plaintiff shall ‘subject to the approval of the court’ select and retain counsel to represent the class.”). Indeed, in light of the PSLRA’s explicit language, numerous courts have permitted lead plaintiffs to retain and substitute (or add) new counsel subsequent to the initial selection of lead counsel. *See e.g., In re Merck & Co., Inc. Sec. Litig.*, 432 F.3d 261, 266 (3d Cir. 2005) (on appeal of order granting motion to dismiss, permitting lead plaintiff to retain and substitute new counsel but noting that lead plaintiffs must always obtain court approval for new lead counsel). *See also* Declaration of Bruce D. Bernstein in Support of Co-Lead Gilbert Rodriguez’s Motion (“Bernstein Decl.”), Exh. A (*In re Williams Securities Litigation*, No. 02-CV-72-SPF-FHM (N.D. Okla. 2006) (granting motion to appoint additional counsel immediately prior to trial)).

Bernstein Litowitz possesses extensive experience litigating securities class actions on behalf of injured investors. *See* Bernstein Decl., Exh. B (Firm Resume of Bernstein Litowitz

Berger & Grossmann LLP). Bernstein Litowitz will work diligently with Co-Lead Counsel to provide the members of the proposed class with the highest caliber of legal representation. In fact, Bruce Bernstein, a former attorney at Dreier LLP who played a key role in prosecuting this matter, has recently joined Bernstein Litowitz as counsel and will continue to litigate this action on behalf of Co-Lead Plaintiffs and the class.

Accordingly, Co-Lead Plaintiff respectfully requests that the Court formally approve the selection of the law firm of Bernstein Litowitz as Co-Lead Counsel in the place and stead of Dreier LLP in the above-entitled action. A proposed order is attached.

Dated: January 13, 2009

Respectfully submitted,

McDANIEL & ANDERSON, L.L.P.

/s/ L. BRUCE McDANIEL

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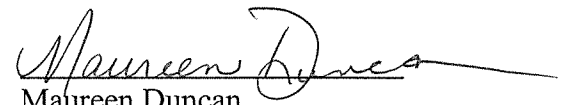
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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2009 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or *pro se* parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel of parties who are not authorized to receive electronically Notices of Electronic Filing.


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